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October 16, 2019

VIA ECF

Hon. Paul A. Engelmayer, U.S.D.J.
United States District Court
Southern District of New York
United States Courthouse
40 Foley Square
New York, NY 10007

Re: WBAI, as an Affiliate of the Pacifica Network, by Carolyn
McGuire, et al. v. Pacifica Foundation; Case No. 1:19-cv-09387

Dear Judge Engelmayer:

We represent Respondent, Pacifica Foundation, in the above referenced action.

Yesterday morning, this Court entered an Order issuing a Temporary Restraining Order granting the following temporary relief [ECF No. 16]:

- Enjoining Petitioners from implementing any motion from the October 13, 2019 meeting of the Pacifica National Board until such time as this Court has issued a ruling determining the validity of the October 13, 2019 motions;
- Enjoining Petitioners from disregarding or causing others to disregard the properly passed motions of the Pacifica National Board on October 12, 2019 until such time as this Court has issued a ruling determining the validity of the October 13, 2019 motions;
- Enjoining Petitioners from holding or causing to be held any regular or official meeting of the Pacifica National Board without following the notice procedures set forth in Article 6 of Pacifica's Bylaws as well as all other procedures in Pacifica's Bylaws; and
- Enjoining Petitioner-Attorney for Petitioners Arthur Schwartz from engaging in direct or indirect contact with Pacifica employees, including, but not limited to, the Pacifica Human Resources Department and Pacifica National Board members regarding the subject of this litigation without prior consent from counsel for Pacifica.

FG:10584584.1

Hon. Paul A. Engelmayer, U.S.D.J.

October 16, 2019

Page 2

Throughout yesterday and last night, Petitioners have repeatedly violated this Order. Attached here as **Exhibit A** is a notice for an improperly noticed Pacifica National Board meeting instituted by Petitioners in this action in direct violation of the Court order. Attached here as **Exhibit B** is an e-mail from Grace Aaron, the Pacifica National Board member who, as set forth in our motion, was communicating with Arthur Schwartz all weekend to stall the valid voting process, noticing a "Pacifica National Board Meeting" for October 15, 2019 at 6 p.m. in direct violation of the Court order. Attached here as **Exhibit C** is a Press Release sent by "Coalition for WBAI" on October 15, 2019 at 6:05 P.M. stating that the improperly passed October 13th resolution was valid and should be implemented and that the properly passed October 12th resolution was not valid and should be disregarded in direct violation of this Court's order.

Additionally, former Petitioner, Alex Steinberg, who Petitioners' counsel voluntarily dismissed from the action over the weekend, has been circulating the Court's scheduling order dated yesterday [ECF No. 17] and informing Pacifica Foundation Board members, WBAI supporters, and the press that the *scheduling order* invalidates the Order of the First Department [ECF No. 2-12] vacating the majority of the Petitioners' Temporary Restraining Order. Attached here as **Exhibit D** is a copy of Mr. Steinberg's e-mail. Attached here as **Exhibit E** is a copy of a Brooklyn Eagle article reporting that the scheduling order alters the First Department Order. Attached here as **Exhibit F** is Justice Nervo's original TRO Order [ECF No. 2-1] and the Order vacating that Order in part by the First Department [ECF NO. 2-12]. In addition, Arthur Schwartz appeared last night at a "rally" with Pacifica National Board member and former Petitioner, Alex Steinberg, at which he touted the same narrative as set forth in these exhibits, also in violation of the Court's order.

In contrast to Petitioners, Respondent has complied with the modified TRO of the First Department. See proof of payment of the WBAI employees attached here as **Exhibit G**.

We believe that these most recent maneuvers are simply further attempts by Petitioners' attorney, Arthur Schwartz, to force an emergency conference before the court by flagrantly violating court orders. According to the court orders, Mr. Schwartz and his associates simply have to refrain from taking these actions until Monday when the court will hear his arguments as to all emergency relief previously granted in this case. We respectfully request that the Court inform Mr. Schwartz that he and his clients are required to comply with the Order of this Court and the Order of the First Department so that this case may proceed on the merits. A decision on the merits includes a decision on the propriety of removal, which is already scheduled to be briefed by the Court's October 15, 2019 scheduling order.

Respectfully,

FOSTER GARVEY PC



Kara Steger
Associate